Proportionality in War: Revising Revisionism*

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In this article I argue that revisionists in just war theory must further revise their proportionality principles. I show that on the revisionist view it is possible for a war to be proportionate, even though all the acts of war are disproportionate, and it is possible for a war to be disproportionate, even though all the acts of war are proportionate. I then argue that consideration of these cases shows the revisionist view, as it stands, to be unsatisfactory, and I explore some ways in which revisionists might further revise their understanding of proportionality.

I. INTRODUCTION

Proportionality is a central concept in just war theory. There are two proportionality principles in just war theory, since proportionality makes an appearance in the criteria of both jus ad bellum, which governs the resort to war, and jus in bello, which governs conduct in war. In both, proportionality is taken to be a necessary condition of permissibility: disproportionate wars and disproportionate acts of war are impermissible. In traditional just war theory, there are three differences between ad bellum proportionality and in bello proportionality. The first follows from the general distinction between the two sets of just war principles and their different functions. Ad bellum principles govern the resort to war, and

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in bello principles govern acts of war. Consequently, ad bellum proportionality is one of the relevant tests for deciding whether going to war will be justified, while in bello proportionality is one of the relevant tests for deciding whether an act of war will be justified.

The second difference also follows from the general ad bellum/in bello distinction. It concerns the unit of assessment. Ad bellum proportionality assesses the proportionality of "the war as a whole," while in bello proportionality assesses the proportionality of "acts of war." The third difference, which has attracted attention in recent scholarship, concerns the kind of assessment. Crudely put, in traditional just war theory, ad bellum proportionality is a moral assessment, while in bello proportionality is a nonmoral assessment. The ad bellum assessment weighs the harms the war will cause against the good it will achieve.[1] However, traditional just war theory allows that soldiers fighting in an unjust war, with no just cause, can nevertheless fight justly. So, instead of weighing the harms that acts of war will cause against the good they will do, the in bello assessment weighs the harms the act of war will cause against its contribution to "the end of victory."[2] The laws of war follow this traditional separation of ad bellum and in bello proportionality by making the in bello criterion one in which combatants must assess the damage that they will do against the "concrete and direct *military advantage* anticipated."[3]

To summarize, traditional just war theory conceives of proportionality in war as follows:

1. In this article I will assume that harm vs. good is the relevant proportionality comparison. This skates over some difficult issues concerning the "currencies" of proportionality. For example, there has been debate over whether non-just-cause goods can be included as goods; see Jeff McMahan, "Proportionality and Just Cause: A Comment on Kamm," *Journal of Moral Philosophy* 11 (2014): 428–53. Jonathan Quong has argued (for defense against potentially liable attackers) that the relevant comparison is "force" vs. rights protected (Jonathan Quong, "Proportionality, Liability, and Defensive Harm," *Philosophy and Public Affairs* 43 [2015]: 144–73), while (again for proportionality calculations involving the potentially liable) Frances Kamm compares harm done to the wrongdoer vs. the wrong to be avoided (F. M. Kamm, *Ethics for Enemies* [Oxford: Oxford University Press, 2011], 133–34). The cases presented here do not directly engage with Kamm's and Quong's views, since they envisage harms to the nonliable. However, some could be made into a case in which potentially liable parties are harmed. So far as I can see, everything I say here would apply, mutatis mutandis, to the proportionality calculations recommended by Kamm and Quong. One case (*Faulty Guns*) could not be a case involving the potentially liable, since it affects future persons, and future persons cannot possibly be liable.

2. Michael Walzer, *Just and Unjust Wars*, 4th ed. (New York: Basic, 2006), 129.

3. Geneva Convention, Additional Protocol 1, Article 51(5)(b) (italics mine). Similar language (relating to military advantage, although this time "overall military advantage") is found in ICC, Rome Statute (1998), Article 8 2(b)(iv). For more on proportionality in the laws of war, see Adil Ahmad Haque, *Law and Morality at War* (New York: Oxford University Press, 2017), chap. 8.

Traditional ad Bellum Proportionality

(1) is the proportionality calculation used to help determine whether the resort to war is permissible;
(2) assesses the war as a whole;
(3) is a moral assessment.

Traditional in Bello Proportionality

(4) is the proportionality calculation used to help determine whether acts of war are permissible;
(5) assesses acts of war;
(6) is a nonmoral assessment.[4]

Revisionist just war theory has taken issue with claim (6). Whatever its merits as a piece of international law, it has recently been claimed that this nonmoral calculation cannot capture in bello proportionality in the ethics of war. Just as the general idea of soldiers on the unjust side fighting justly has recently come under attack, the idea of an act of war being in bello proportionate, while advancing the cause of an unjust war, has received particular criticism.[5] If the ends of the war are evil, then an act of harm cannot be made morally proportionate by securing enough military advantage for those fighting for that evil. Indeed, on the traditional understanding, those who further evil ends to a greater extent may be acting proportionately, and thus potentially permissibly, while those who further evil ends to a lesser extent, or do not further evil ends at all, may be acting disproportionately, and thus impermissibly. Consider a Nazi soldier with two options. One involves foreseeably killing five civilians, but with a significant military advantage for the Nazis. This would, of course, be bad from the jus ad bellum perspective, but it could be in bello proportionate, and thus potentially permissible, on the traditional view. The other option is to fire on a different position, also foreseeably killing five civilians, but without securing any military advantage. This is better from the ad bellum perspective—five die, but evil ends are not furthered.

4. I do not argue that these claims are explicitly made in each and every text of traditional just war theory, but all are commonplace. To the extent that claims (1), (2), (4), and (5) are not made explicitly, this is possibly because the distinctions between (1), (2) and (3), (4) have not been sufficiently appreciated. This is one of the central themes of the present article. See Sec. VI.

5. For influential works in this vein, see Jeff McMahan, *Killing in War* (New York: Oxford University Press, 2009); Cecile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012); Helen Frowe, *Defensive Killing* (Oxford: Oxford University Press, 2014). For criticisms concerning the traditional understanding of proportionality in particular, see Thomas Hurka, "Proportionality in the Morality of War," *Philosophy and Public Affairs* 33 (2005): 34–66, 44–45; Jeff McMahan, "The Ethics of Killing in War," *Ethics* 114 (2004): 693–733, 709–18; Jeff McMahan, "Just Cause for War," *Ethics and International Affairs* 19 (2005): 1–21, 6.

But this second act is in bello disproportionate, and thus impermissible, on the traditional view.

Revisionists about just war theory deny that ad bellum and in bello proportionality assessments ought to assess harm against differential standards. The revisionist understanding of proportionality leaves the ad bellum standard as was but insists that in bello proportionality is the same kind of calculation as the ad bellum calculation: it is a calculation in which harms (or, more broadly, bad effects) must be justified by reference to the moral goods they will achieve. That is, revisionists insist not only that in bello proportionality is also a moral assessment but also that it is a moral assessment that employs the same "currencies" as ad bellum proportionality. As it stands, therefore, the revisionist critique of traditional just war theory appears to leave claims (1)–(5) above untouched and seeks to replace (6) with this claim:

Revisionist in Bello Proportionality

(6*) is a moral assessment (of the same kind as the ad bellum proportionality assessment).

My aim in this article is to show that the revisionist project cannot simply switch claim (6) for (6*) and leave the rest of the structure of ad bellum and in bello proportionality in place. I will argue that revisionist proportionality must be more revisionist still, and I will canvass a variety of ways which revisionists could respond to the problems I unearth.

In particular, I will argue that with two proportionality conditions with the same currencies, a tension emerges between claims (1) and (2): the idea that ad bellum proportionality governs the morality of the resort to war, and that the relevant assessment is one that compares the harms and goods of the "war as a whole." I will argue that the resort to war ought to take account of whether, and to what extent, individual acts of war will be proportionate or disproportionate, and that this information cannot be garnered by looking at the war as a whole.

I arrive at the conclusion that the revisionist stance on proportionality is, as it stands, unsatisfactory by examining two kinds of cases: those in which each and every act of war is proportionate, but the war as a whole is disproportionate, and those in which the war as a whole is proportionate, but each and every act of act of war is disproportionate. Showing that such cases exist is itself an important contribution to contemporary just war theory, since, as I shall show, the leading revisionist, Jeff McMahan, has assumed that such cases cannot exist under the revisionist view and has argued that the fact that the revisionist view cannot give rise to such cases is to its advantage over traditional just war theory. Having shown that the revisionist view does not rule out such cases, I then show that revisionists cannot, in the face of these cases, leave their

view unchanged. I consider how revisionists can respond to the issues raised. I canvass a variety of potential responses, concluding that the most plausible requires two proportionality principles governing the resort to war: one which looks at the "war as a whole," the other at the disproportionality (or general unjustifiability) of the acts of war. Whatever route we take, I argue, revisionists cannot settle for replacing (6) with (6*): more radical revisions to just war theory's understanding of proportionality are required.

There are different perspectives from which we can make proportionality judgments, and in this article I will be concerned with two types of proportionality calculation. In a *fact-relative* proportionality calculation, we must look at what actually happened—at what bad effects the action(s) actually caused and what good effects were thereby achieved. In an *evidence-relative* proportionality calculation, we must look at whether the act was proportionate, given the evidence available to the agent.[6] My claims in this article apply to both fact-relative and evidence-relative proportionality.

II. REVISIONIST AD BELLUM AND IN BELLO PROPORTIONALITY

My central aim in this article is to expose some important puzzles for proportionality once we see both ad bellum and in bello proportionality as moral assessments of the same kind. These puzzles come to light when we see cases in which the war as a whole is disproportionate, even though each and every act of war is proportionate, and cases in which the war as a whole is proportionate, even though each and every act of war is disproportionate.

The person who has offered the most sustained critique of traditional just war theory is Jeff McMahan. McMahan, however, has assumed that the kind of cases I want to explore here could not exist on his revisionist view and, furthermore, has argued that this is a point in favor of the revisionist view.

The primary criticism that revisionists offer to the traditional understanding of in bello proportionality is what we can call "the problem of missing moral grounds."[7] The traditional nonmoral view of in bello

6. For the idea of fact-relative and evidence-relative permissibility, see Derek Parfit, *On What Matters*, vol. 1 (Oxford: Oxford University Press, 2011), chap. 5. For the idea of fact-relative and evidence-relative proportionality, see Jeff McMahan, "Proportionality and Time," *Ethics* 125 (2015): 1–25; Hurka, "Proportionality in the Morality of War." I have argued elsewhere that evidence-relative proportionality is complex. See Patrick Tomlin, "Subjective Proportionality," *Ethics* 129 (2019): 254–83.

7. I am indebted to an *Ethics* referee here for helping me to see that there are these two independent criticisms in revisionist thinking. This main line of criticism is articulated

proportionality allows that an act of war can be in bello proportionate, and morally permissible, even when the war is an unjust war, with an unjust cause. But how, the revisionist asks, can a nonmoral proportionality calculation deliver a moral conclusion? How can furthering unjust ends to a sufficient degree grant an act of war the moral stamp of permissibility? Proportionality requires us to do enough moral good to justify the harms we impose—this, revisionists have shown, is an inescapably moral issue.

McMahan, however, has also offered a secondary critique, which criticizes the way that the traditional view allows our in bello proportionality judgments to diverge from our ad bellum proportionality judgments. He writes,

> If the unjust side's war is inevitably [ad bellum] disproportionate, it seems that many or most of the acts of war that together constitute that war must also be disproportionate. For if all the acts of war that together constitute one side's war were proportionate, that would seem to guarantee that the war as a whole must be proportionate. Yet traditional just war theory denies this. It maintains instead that it is possible for every act of war by combatants on the unjust side to satisfy the *in bello* proportionality constraint, even though their war itself is disproportionate.[8]

Elsewhere, he states that if ad bellum proportionality and in bello proportionality adopt the same currencies (i.e., if (6*) is accepted), then "a war would be guaranteed to be proportionate if all its constituent acts of war would be proportionate."[9] McMahan labels the idea that a war could be disproportionate when all of its constituent acts were proportionate "bizarre."[10] The idea here is that we should expect a certain kind of relationship between our proportionality judgments concerning wars and the acts that constitute them. Unlike the first critique, this would also apply to wars that have a just cause but are nevertheless disproportionate.

McMahan, therefore, seems to accept the following claim:[11]

(7) If every act of a war is proportionate, then the war as a whole must be proportionate.

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by Jeff McMahan in "Proportionality and Necessity in *Jus in Bello*," in *The Oxford Handbook of the Ethics of War*, ed. Helen Frowe and Seth Lazar (New York: Oxford University Press, 2016), 418–39, 424.

8. Ibid., 423–24. For a similar passage, see Jeff McMahan, "Proportionate Defense," *Journal of Transnational Law and Policy* 23 (2013–14): 1–36, 20–21.

9. McMahan, "Proportionate Defense," 17.

10. Ibid., 21.

11. McMahan used to accept these claims without reservation. He now includes caveats, citing an unpublished ancestor of this article as the reason. McMahan, "Proportionality and Necessity," 423 n. 10.

McMahan also claims that if a war is disproportionate, it "seems that many or most" of the acts of war must be disproportionate. However, although in most actual disproportionate wars this will probably be the case, there is no conceptual link between the number or proportion of disproportionate acts of war and a war's overall disproportionality. As a matter of principle, the claim that "many or most" of a disproportionate war's acts will be disproportionate is surely false: it is easy to imagine a war consisting almost entirely of proportionate acts, with one disproportionate act, where that were enough to make the war as a whole disproportionate. However, the following seems like a safer claim, which is not strictly implied by claim (7) but seems to be its natural corollary:

(8) If every act of a war is disproportionate, then the war as a whole must be disproportionate.

Claims (7) and (8) are, at first blush, plausible. The traditional view is clearly at odds with them, and this appears to be a strike against the traditional view: it is a counterintuitive entailment of the traditional view that it allows these seemingly paradoxical states of affairs. And since the revisionist view proposes the same kind of calculation for both proportionality principles, it is understandable that we might expect a certain consistency between the two calculations: the ad bellum proportionality calculation will simply be the sum of all the in bello calculations, meaning that this view will be consistent with claims (7) and (8).

Claims (7) and (8) seem even more plausible when we consider what it would mean to reject them. Recall that ad bellum proportionality and in bello proportionality are taken to be necessary conditions of the permissibility of wars and acts of war, respectively. Therefore, to reject (8) and allow that there are wars that are proportionate, even though each and every act of war is disproportionate, would (without further amendments to just war theory) be to allow that a war could be permissible, and a state could be permitted to send its troops to war, even when it knows that none of them would be permitted to fight and all of them ought to refuse to go. Similarly, without (7), we could have a war in which every soldier acts permissibly, but the state would have acted impermissibly in sending them to that war.

Removed from the particular setting of war, and translated to general claims about the proportionality of particular harmful actions and the proportionality of courses of harmful action, claims (7) and (8) may seem not only plausible but also uncontroversial. Imagine that I am trying to pursue some good end and am trying to achieve it by punching someone in the face. If each and every punch does not do enough good to justify the harm caused, and is therefore disproportionate, then it is hard to see how the overall course of punches could do enough good

to be proportionate. Similarly, imagine that each and every punch is proportionate. It is hard to see how the overall course of punches could then be disproportionate.

This gives us some more general claims, of which claims (7) and (8) are more specific versions:

(7*) If each individual act within a harmful course of action is proportionate, then the course of action must be proportionate.
(8*) If each individual act within a harmful course of action is disproportionate, then the course of action must be disproportionate.

In the following sections, I will deny that the revisionist view of proportionality is consistent with claims (7), (7*), (8), and (8*). We might be tempted to think that revisionists can then simply reject these claims. However, as I will show in Section VI, revisionists cannot settle merely for rejecting (7) and (8). The revisionist theory of proportionality must be further revised.

III. LATER ACTS IN A COURSE OF ACTION

In this section and the following two, I will show a series of ways in which wars might violate (7) and (8) even when in bello proportionality is understood as a moral calculation. The first kind of case I will focus on are ones in which later acts in a course of action have very different effects from earlier ones, in terms of the amount of good or harm that they do, but where how much good or harm they do depends on the number of other harmful acts performed.

Recall, first, claims (7) and (7*):

(7) If every act of a war is proportionate, then the war as a whole must be proportionate.
(7*) If each individual act within a harmful course of action is proportionate, then the course of action must be proportionate.

Now consider this example:

> *Bombing Campaign*: Country A wages war against Country B. The war consists of 100 bombing raids. Together, these bombing raids cause a loss of life that is disproportionate to the just cause that Country A is pursuing. However, 100 bombing raids do a lot more good than ninety bombing raids. Any bombing raids after the ninetieth save many more lives, per raid, than the first ninety.

This war is disproportionate. According to claims (7) and (7*), therefore, it cannot be the case that every individual act is proportionate. But I

believe that they can be. Let us look at the fact-relative proportionality calculations first. Imagine that we are pilots who have participated in *Bombing Campaign*. We are trying to assess whether we have participated in a disproportionate war, and whether our own actions in the war were disproportionate. In order to assess the proportionality of an act, or set of acts, we must assess how much harm and how much good is done compared with some counterfactual. In assessing the proportionality of a war as a whole, how to pick out the relevant counterfactual is a complex issue, but it certainly involves not going to war.[12] For an individual acting in a war, the relevant counterfactual must involve not performing that act of war. Imagine in this case that the pilots had only two options: fly or don't. Then, in order to see whether a particular harmful act was proportionate, we must assess the world in which they flew against the world in which they didn't.

It is important to note that in saying that proportionality assessments involve counterfactual comparisons that involve how much harm we do, we do not commit ourselves to a counterfactual account of harm, and certainly not a simple counterfactual account of harm. Even on a noncomparative or temporal comparison view of harm, I can compare a world in which I do harm with a world in which I do not, and I must do so to see whether my harmful act is proportionate.[13]

It is clear that in order to assess the proportionality of some harmful act, the relevant comparison is with a world in which the harmful act does not occur. However, when we are considering individual acts of war, the relevant counterfactual must still include other acts of war that are performed by others, since the proportionality and permissibility of some conduct in war will often depend on other acts of war being performed by other people. For example, killing one individual as part of a raid on an enemy position can be proportionate only if others play their part and also fire on the enemy position—otherwise it is a senseless loss of life that

12. David Mellow, "Counterfactuals and the Proportionality Criterion," *Ethics and International Affairs* 20 (2006): 439–54; Thomas Hurka, "Proportionality and Necessity," in *War: Essays in Political Philosophy*, ed. Larry May and Emily Crookston (Cambridge: Cambridge University Press, 2008), 127–44; Kieran Oberman, "War and Poverty," *Philosophical Studies* 176 (2019): 197–217.

13. One possible objection here is that while I may be able to avoid a simple counterfactual account of harm, the example nevertheless relies on a simple counterfactual account of causation, since the good done by flying is measured in this counterfactual way. However, this is assumed only if we make the further assumption that proportionality must only take into account good caused. I cannot develop an account of causation, or its relationship to proportionality, here. Nevertheless, this counterfactual understanding of in bello proportionality seems, at least, plausible. Perhaps the right upshot of the present article is that we should further revise our understanding of in bello proportionality. This is examined in Sec. VI.

will not do any good, and therefore is not proportionate.[14] The proportionality of a soldier's act must be assessed against the backdrop of war. If we compared his actions with a counterfactual in which not only did he not act but also the other acts of war were not performed, we would divorce his acts from the context in which they were performed—and it is only in that wider context, often, that his actions could possibly be permissible.

Given that the counterfactual for each act of war must involve other acts of war, the only plausible counterfactual for assessing the fact-relative proportionality of an individual bombing is the world in which the other ninety-nine raids still went ahead. If we are trying to assess the proportionality of this particular bombing raid, we should compare the world in which this bombing raid went ahead and the world in which it did not, but in which as much as possible is held constant.[15]

Imagine that each bombing raid killed ten innocent people as a side effect and that this number is stable across all plausible understandings of harm and the harm that we cause.[16] Overall, then, 1,000 people were killed in the 100 bombing raids. Imagine that each of the first ninety bombing raids saved one person, while bombing raids 91–100 each saved ninety people. Overall, then, 990 people were saved. This is not proportionate, overall: fewer people were saved than were killed. We participated in a disproportionate and therefore unjust war. But when we turn our attention to each individual bombing raid, we find that each was fact-relative proportionate.

This strange result comes about because of the different counterfactuals used. When we remove one act from a sequence of acts like this, no matter which act we remove, we remove the good done by the final act. This is because if Bomber 45 had not flown, Bomber 46 would simply have become Bomber 45, Bomber 47 would have become Bomber 46,

14. In terms of the relevant counterfactual, there is an important distinction here between individuals involved in collective action like war and those involved in individual courses of action (e.g., in self-defense). In collective action, we must take the actions of others to be de facto: what they actually did or will do. We cannot take our actions for granted in the same way.

15. Even if this is not quite the right counterfactual, the counterintuitive results I show here could still be generated. What matters is that the counterfactual for the war as a whole differs from the counterfactual for each act of war.

16. This stipulation is useful because it (*a*) means that the case is not a case in which the harm is overdetermined, which, while the obvious case for an article like this to focus on, is fraught with particular difficulties; (*b*) allows us to be ecumenical over the definition of harm; and (*c*) relatedly, avoids us having to decide whether the "direct harm" or the "marginal harm" of an individual act should be what is assessed for in bello proportionality. For an overview of differing accounts of harm and how overdetermination cases present difficulties for them, see Victor Tadros, "What Might Have Been," in *Philosophical Foundations of the Law of Torts,* ed. John Oberdiek (Oxford: Oxford University Press, 2014).

and so on, until Bomber 100 became Bomber 99. So, if Bomber 45 had not flown, 90 fewer people would have been saved.

Imagine that the additional amount of harm caused by each raid 91–100 is proportionate, given the additional good done by them (nine people are saved for each person killed). If this is true, then each and every bombing raid is proportionate: if any one raid had not gone ahead, there would still have been ninety-nine other raids. Removing one raid from the set merely removes an act that does some harm (kills ten) but produces a lot of good (saves ninety lives). And so each raid was in bello proportionate.

The above analysis relies on the idea that Bomber 45 can say to himself, "Had I not flown, ninety fewer people would have been saved. So I killed ten, but this saved ninety." Is this reasoning sound? After all, we know that the raid he actually flew directly saved only one life. Nevertheless, I think this reasoning is sound, at least if we have a counterfactual understanding of proportionality. Essentially what Bomber 45 did was change the effectiveness of Bomber 91's raid. In a world in which Bomber 45 didn't fly, Bomber 91's raid is the ninetieth raid and so only saves one. But in a world in which Bomber 45 flew, Bomber 91's raid saved ninety. The question is whether Bomber 45 can count the additional ninety saved when considering the fact-relative proportionality of his own act. I think he can. Imagine a different situation: Soldier 1 is going to rescue some people from Room 1. This involves killing the guard to Room 1, but it will save ten innocent people. Soldier 2 cannot directly save anyone, but he can kill the guard to Room 2, which will allow the ten people in Room 2 to move to Room 1, so that Soldier 1 will also save them. Soldier 2 changes the effectiveness of Soldier 1's act of killing. Is it proportionate for Soldier 2 to kill in order to do so? It seems so. And so it seems it must be proportionate for Bomber 45 to fly.[17]

It is important to note that the immediate conclusion drawn from *Bombing Campaign* is that, on the revisionist view, each bomber acts in bello proportionately. It may not be the case that he acts permissibly, or is not accountable for his contribution to the overall disproportionate series of acts. Nor do I take a stand here on what is a very difficult question: are these bombers liable to be harmed? Collectively, the bombers

17. There are two versions of this case, with potentially important moral differences. Imagine that each bomber kills ten people in one house, on a street numbered 1–100. In version 1, if Bomber 45 does not fly, the people at number 45 are spared, but ninety fewer people are saved. This case is more straightforward—flying kills ten (those at number 45) and saves ninety. In version 2, if Bomber 45 does not fly, Bomber 46 will kill the people at number 45, Bomber 47 will kill the people at number 46, and so on. The people at number 100 will be spared. Flying will save ninety, but the harms done are a more complex matter—if he flies, Bomber 45 will kill ten who would be killed anyway (those at number 45) and will cause the deaths of (but not directly kill) those at number 100.

are engaged in a disproportionate act of violence. But individually, they are not. My claim is simply that if any bomber acts impermissibly and is accountable, and if any bomber is liable to be harmed, this is not due to the disproportionality of his individual act. Further principles would be needed to explain why this is the case.

It will, perhaps, be instructive to compare *Bombing Campaign* to a case that is in all respects identical, other than that in this case each bombing raid is simultaneous rather than sequential. Call this *Simultaneous Bombs*. In this case, since each and every bomber is symmetrically situated, we must offer the same judgment on the fact-relative proportionality for each of their actions. There are no identifiable ten "additional" bombers who change the case from a ninety-bomber case to a 100-bomber case, but 100 bombers will nevertheless do a lot more good than ninety bombers. So we must ask for each what the relevant counterfactual is, and whether their individual act of war is proportionate compared with this counterfactual. From a fact-relative perspective, when we know that all 100 bombers did in fact fly, I see no option but to compare each action with a counterfactual in which they had not flown but the other ninety-nine had. In such a case, each and every bomber acts proportionately since the marginal good done by their act is enough to justify killing ten people. This is important, as it shows that even if I am wrong that the revisionist view of proportionality is incompatible with claims (7) and (7*) in *Bombing Campaign*, it surely is in *Simultaneous Bombs*.

Let us now turn to the evidence-relative calculation. There is an easy way to show that evidence-relative judgments about the whole war and the acts of war can come apart—since evidence is both agent- and time-relative, if the decisions about the war and the acts of war are taken at different times or by different people, it is clear that they could come to correct conclusions about evidence-relative proportionality that differ, based on different evidence about the likely effects of the campaign.

However, let us imagine that each and every person involved has the same information about the costs and benefits of each raid, and consequently about the campaign as a whole. In order to show incompatibility with (7) and (7*), the simplest move would ordinarily be to stipulate that the pilots know the facts as described in the original case to be beyond reasonable doubt. This would ensure that we get the same result from the evidence-relative perspective as from the fact-relative perspective. If we put ourselves in the position of one pilot, deliberating about whether or not to drop his bombs, and in particular whether doing so will be proportionate, we can see how this works: it will be proportionate if the best available evidence states that it is beyond reasonable doubt that at least ninety of his fellow pilots will drop their bombs. Let us imagine that one pilot has such evidence (imagine that another ninety have declared that they will drop their bombs, and there is no reason to doubt that they

will). Then, his act will be evidence-relative proportionate, even though the war is evidence-relative disproportionate.

However, the reason I wanted to cover evidence-relative proportionality separately is that it is less clear that it is possible for all 100 pilots to be in this position. And this is, after all, what we need to be true in order to show an incompatibility between (7) and (7*) and revisionism at the evidence-relative level, since every single act needs to be evidence-relative proportionate. If each pilot is deliberating about what to do, and so, from his own perspective, is unsure as to whether he will fly, and if the proportionality of his flight depends on at least ninety others flying, how can he (and therefore any pilot) know whether or not his act will be proportionate?

Imagine that no individual bomber will know whether the other pilots will drop their bombs. Each bomber deliberates about what to do. But the best available evidence states that at least 90 percent of bombers will end up dropping their bombs. You may wonder how each can be confident of this, if each is deliberating about what to do. However, it is quite possible for a group of people to each face a decision, such as whether or not to respond to an incentive, while confidently predicting what the overall response will be (e.g., 90 percent will respond in a certain way). If each pilot is confident that at least 90 percent will drop their bombs, each acts evidence-relative proportionately in dropping his bombs, but the 100 bombing raids together would remain disproportionate, at both the fact-relative and evidence-relative levels.

A reverse case can be used to show how the revisionist view of proportionality clashes with claims (8) and (8*). Recall that these claims state that if every act of a war (individual act) is disproportionate, then the war (course of action) must overall be disproportionate. But now consider a version of *Bombing Campaign* in which the first ninety bombing raids each kill ten and save 1,000. The final ten each kill ten and save one. The campaign overall is proportionate, since it kills 1,000 and saves 90,010. But each individual bombing raid is disproportionate, since if that bomber had not flown, then the bomber would not have killed ten people, and only one fewer person would have been saved.

IV. AVERTING THREATS CAUSED BY WAR

I will now introduce another set of cases that can be used to pull apart our ad bellum and in bello proportionality judgments, even when both are moral assessments. These are cases in which threats are averted that would not have existed were it not for the decision to go to war.[18] This kind of case

18. I am grateful to Seth Lazar for suggesting I look at this kind of case.

can be used to show the incompatibility of revisionist views on proportionality and (7) and (7*).

Consider this case:[19]

> *Preemptive Strike*: Country A has a just cause for war against Country B, but the means at Country A's disposal mean that the harms caused by the war will be disproportionate to the achievement of its just cause. If Country A declares war, Country B will preemptively strike against Country C. The means at Country A's disposal are proportionate to the just causes of Countries A and C combined.

If Country A wages war, each act of war can be measured against its contribution toward defeating the unjust threats to both Countries A and C. Imagine that each act of war will be proportionate on this measure. But Country C will be under threat only because Country A chose to wage war. Country A therefore cannot appeal to saving Country C in deciding whether it will be proportionate to go to war. As Seth Lazar puts it (making a point about necessity, but which applies equally to proportionality), "We cannot count averting threats that will arise only if we decide to go to war among the goods that justify the decision to go to war."[20] Again, this is due to the differential counterfactuals that apply in bello and ad bellum. Once we are in a war, the lives of the civilians threatened in Country C are relevant to the in bello calculations. But those lives are not at risk in the absence of the war, which is the relevant counterfactual for the ad bellum calculation.

V. NONIDENTITY CASES

The final kind of case on which I will focus are nonidentity cases. If we accept some widely accepted (though controversial) claims about population ethics, then our revisionist jus ad bellum and jus in bello proportionality judgments can again come apart in ways that claims (7), (7*), (8), and (8*) suggest that they should not be able to.

To begin with, recall claims (8) and (8*):

> (8) If every act of a war is disproportionate, then the war as a whole must be disproportionate.
> (8*) If each individual act within a harmful course of action is disproportionate, then the course of action must be disproportionate.

19. I am grateful to Jeff Howard for a useful line of questioning that helped in formulating this example.

20. Seth Lazar, "War," *The Stanford Encyclopedia of Philosophy* (Summer 2016 Edition), ed. Edward N. Zalta, http://plato.stanford.edu/archives/sum2016/entries/war/, 48.

Nonidentity cases can show these principles to be incompatible with the revisionist view of in bello proportionality. In order to agree with my argument for this, you will have to accept the following:

> *Difference View*: there is a moral difference between acts that lead to impersonal loss (which make things worse from the point of view of general welfare, but not worse for any particular person) and acts that make things worse for a particular person. All else equal, and in cases in which all lives are worth living, impersonal loss is not as bad as persons being made worse off.[21]

Note that the *Difference View* does not imply that acts that decrease the general welfare but do not make things worse for any particular person are not bad (though it is consistent with that view). It simply says that such acts are not as bad as those that make things worse for a particular person. The difference could be very large or very slight.

To illustrate the difference that the *Difference View* takes to be morally relevant, consider a case in which Chris and Hilary face a choice—either they could conceive now and have a child (Child A), who will have some health problem, or they could wait a month and have a different child (Child B), who will not have that health problem. Imagine that both Child A and Child B would have a life worth living, but Child B's lifetime well-being would be significantly greater than that of Child A. Now consider a case in which Chris is pregnant and must decide whether to take some pills that have a small benefit for her, but which will seriously harm the child (Child C) and make it worse off than it would have been otherwise. If she does not take the pills, Child C will be as well-off as Child B. If she does take them, Child C will be as well-off as Child A.

The *Difference View* claims that it is worse to make Child C worse off than it is to choose Child A over Child B, even though the welfare levels being chosen between are identical, and A, B, and C will all have lives worth living. In the first case, if the couple chooses to create Child A, they bring about a life that would not otherwise have existed, albeit one that contains an imperfection. There is impersonal loss, in that Child B's life would have had higher levels of welfare, but Child A is not made worse off. In the second case, Child C is made worse off and is deprived of a possible future without this bad element in her life.

21. I have called this view the *Difference View* since it is the antithesis to Parfit's "No Difference View." See Derek Parfit, *Reasons and Persons* (Oxford: Clarendon, 1984), 367. I am grateful to an *Ethics* referee for helping me to clarify the language here.

I don't have the space to fully defend the *Difference View* here.[22] But I think that the proposed moral difference between causing a worse rather than a better life to come into existence and making people worse off is clear enough, and that many will accept it. Since I cannot defend it fully here, it is worth noting that the most prominent proponent of the revisionist view of just war theory, and of proportionality in particular, Jeff McMahan, is also a proponent of the *Difference View*.[23]

In order to show the incompatibility, we must be able to point to a war (or course of action) that is proportionate, even though each and every action is disproportionate. Here is such a war:

> *Faulty Guns*: Country A wages a war against Country B. Country A has a just cause. Country A will use only grenade launchers. However, all of its grenade launchers are faulty. Every time the trigger is pulled, a grenade is launched toward the target, but a second grenade is also launched, at an angle. These second grenades will not go off immediately, but they will remain on the battlefield and will go off if stood upon. These second grenades cannot be recovered. Country A foresees three things.[24] First, in between ten and twenty years' time, 1,000 children from Country B will step onto the unexploded grenades and will be seriously injured or killed. Second, the war will disperse the population of Country B, such that people will meet sexual partners they would not otherwise have met had the war not occurred. Therefore, the next generation of Country B will contain different children than it would have had Country A not waged the war. Third, the children who will later be killed and injured by the grenades are a subset of those who would not have existed were it not for the war.

Is Country A's war proportionate? In deciding whether it is, we must of course take account of those who will be seriously injured or killed during the war. But we must also take account of the children who will be killed or injured further down the line. If we accept the *Difference View*, however, the injuries to and deaths of these children should be viewed differently from the ad bellum and in bello perspectives.

From the ad bellum perspective, the killing and injuring of these children should be seen as impersonal losses. Since without the war these children would not have existed, then (presuming they have lives

22. For a recent defense, see Michael Otsuka, "How It Makes a Moral Difference That One Is Worse Off Than One Could Have Been," *Politics, Philosophy and Economics* 17 (2017): 192–215.

23. See, e.g., Jeff McMahan, "Causing People to Exist and Saving People's Lives," *Journal of Ethics* 17 (2013): 5–35.

24. In including the stipulation not only that these three things are true but also that Country A foresees them, I bring together evidence-relative and fact-relative proportionality in this discussion.

worth living) they are not, overall, made worse off by the war. These children have worse lives than those who would have existed had the war not taken place—and so the loss is impersonal. These impersonal losses might, on the *Difference View*, still stand in need of justification and need to be shown to be proportionate to the goods generated by the war, but they are less weighty, or easier to justify, than making people worse off.[25]

However, from an in bello perspective, the killing and injuring of these children should be seen as cases in which identifiable individuals are made worse off. That is because even though the war disperses the population, meaning that different children are created from those who would otherwise have been created had the war not taken place, it is unlikely that any individual grenade launch can be said to have the same effect. An individual act of killing will determine the identity of, at most, a handful of individuals (e.g., those who would have been created by someone who is killed will now not exist), but it is unlikely that any individual act in war will later injure one of the very people whose identities it determined. And we can stipulate that Country A knows that no such case will occur. So, while, in this case, the nonidentity issue has bite from the ad bellum perspective, from the in bello perspective it does not.

Now consider my (unrealistic) stipulation, that the war is fought only with the faulty grenade launchers.[26] Since the killing and injuring of the future children must be viewed differently from the ad bellum and in bello perspectives, then we may well come to different conclusions regarding the proportionality of the war and of the acts of war. In particular, we may think the war overall proportionate (due to the discount implied by the *Difference View*) while each individual grenade launch is disproportionate (as the discount does not apply). And so we find claims (8) and (8*) to be false even if we accept the revisionist picture of in bello proportionality: a war can be ad bellum proportionate even though each and every action is in bello disproportionate.

It is worth noting exactly how this difference in ad bellum and in bello proportionality judgments comes about. It is not because the "war as a whole" is somehow disconnected from the individual actions that make up the war. As in the previous sections, the difference between our ad bellum and in bello judgments comes about because of the relevant counterfactuals. When assessing the proportionality of the war as a

25. Recall that in setting up the *Difference View* I stipulated that it was consistent both with the view that impersonal loss did not matter and with the view that impersonal loss is only slightly less bad than making someone worse off (all else being equal).

26. It seems to add to the intuitive force of the case if we stipulate that this is the only way for Country A to fight this war. But in fact this should make no difference to our judgments concerning the proportionality of the war or of the acts of war, since proportionality and necessity are independent criteria of just war or force.

whole, we need to imagine that none of those actions take place—that is the relevant counterfactual. But when assessing an individual act, we need to imagine only that that particular act does not take place—the other acts of war still occur. The acts of war, collectively, determine the identities of those who are later injured. But no individual act of war does this: it does not later injure people whose identities it determined.

In the case as I have described it, the war as a whole determines identities, but the individual acts do not. But this structure is not, in fact, central to the case. What matters is that the particular acts of war do not determine the identities of some persons and later injure those very same persons, while the war as a whole does determine the identities of those who will later be injured as a result of the war.

Imagine a very simple course of action, consisting of two actions:

> Action A creates Person 1 and later injures Person 2.
> Action B creates Person 2 and later injures Person 1.

In this example, the overall course of action does not possess some identity-determining power which the individual acts do not—in this case it is the individual acts that determine identities. But the same point holds as in *Faulty Guns*. Viewed as a course of action "Actions A and B" create and injure Persons 1 and 2, and so it is a nonidentity case. Viewed as individual acts, however, they are not nonidentity cases: identifiable persons who would exist whether or not the act was performed are made worse off.

This point—that a case can be a nonidentity case when viewed as a course of action, but not when the actions are viewed as individual actions—has implications far beyond the ethics of war. For example, consider Parfit's *Depletion* case,[27] or the all-too-real case of climate change policy. These public policy cases are often analyzed in just the same way as, for example, cases of procreative choices involving genetic defects.[28] The above arguments show, however, that these two types of cases are importantly different. The choice for our politicians concerns how, in essence, to affect the choices of others. What I have shown here is that, considered as political decisions, these are indeed nonidentity cases. But this may not be true of the choices that the policies cause, encourage, or allow. Those choices may lead to acts that make people worse off. At the

27. Parfit, *Reasons and Persons*, 362–63.

28. In general, policy-level cases are simply seen as individual cases writ large. For example, Parfit does not distinguish between these cases in *Reasons and Persons*, or in more recent work on the nonidentity problem (Derek Parfit, "Future People, the Non-identity Problem, and Person-Affecting Principles," *Philosophy and Public Affairs* 45 [2017]: 118–57). For awareness of the difference, see John Broome, *Climate Matters: Ethics in a Warming World* (New York: Norton, 2012), 64; Otsuka, "How It Makes a Moral Difference," 209–10.

very least, this is a prima facie important moral difference between the choice of a policy and the choice to create someone with a genetic defect.[29]

Returning to our *Faulty Guns* case, it is of course unlikely that any actual war will be one in which each and every in bello action is disproportionate, while the war overall is proportionate. But the conceptual possibility is an important one, since it reveals that the connection between ad bellum and in bello proportionality is not as tight, even on the reductionist picture, as we might be tempted to believe.

The case is also important because while my case of all the in bello actions being disproportionate may be fanciful, the nonidentity issues raised by *Faulty Guns* are all too real. Wars have a huge impact on who will later exist: they affect both what couples are formed and the timing of when couples have children. For example, the baby boomers—children conceived soon after World War II—would not have existed if it were not for the war. And wars often hugely affect how things will go for future people, for good and for ill. In particular, they can make things go badly for future people through unexploded ordnance, land mines, and the proliferation of guns after combat. Even though the case itself is unrealistic, the moral issues are real.[30]

In this section I have focused on claims (8) and (8*), but (provided that we accept the *Difference View*) nonidentity cases also show claims (7) and (7*) to be in tension with the revisionist view of proportionality. Imagine the following case:

> Action A harms Person 1, creates Person 2, and prevents a future injury to Person 3.
> Action B harms Person 1, creates Person 3, and prevents a future injury to Person 2.

Person 1 is made worse off by these actions, both individually and as a course of action. This harm must be proportionate in order to be justified. Looked at as a course or collection of actions, Actions A and B prevent injury to persons that are also created by the course of action—a nonidentity case. Therefore, as a course of action they do not prevent persons being made worse off; they prevent impersonal loss. But looked at as individual actions, Actions A and B both prevent someone from being made worse off. Therefore, we may judge the collection of actions to be overall disproportionate, as the good of preventing impersonal loss does not justify the harm to Person 1, but both individual acts may

29. I explore these issues in more detail in Patrick Tomlin, "The Impure Non-identity Problem," in *Essays in Honour of Derek Parfit*, vol. 2, *Population Ethics*, ed. Jeff McMahan et al. (Oxford: Oxford University Press, forthcoming).

30. I am grateful to both Michael Robillard and Jeff McMahan for several conversations about population ethics and just war.

nevertheless be proportionate, as the harms to Person 1 prevent people from being made worse off.

VI. SO WHAT?

Thus far I have shown that the revisionist view of proportionality in war, which incorporates claim (6*), is not compatible with some seemingly plausible claims about the relationship between in bello and ad bellum proportionality (claims (7), (7*), (8), and (8*)). (As we have seen, those claims are so plausible that McMahan has sometimes relied on them in rejecting the traditional view of proportionality, in which in bello proportionality is a nonmoral assessment.)

To summarize, then, we have seen that the revisionist view which incorporates this principle,

> *Revisionist in Bello Proportionality*
> (6*) is a moral assessment (of the same kind as the ad bellum proportionality assessment).

is incompatible with:

> (7) if every act of a war is proportionate, then the war as a whole must be proportionate; and
> (8) if every act of a war is disproportionate, then the war as a whole must be disproportionate.

To be clear, this does not spell victory for the traditional view of proportionality. After all, the claims with which (6*) is incompatible are also incompatible with the traditional view. Furthermore, the primary criticism of the traditional view, that of missing moral grounds, remains: effective Nazis still act proportionately and potentially permissibly on the traditional view, whereas they do not on the revisionist view.

So where does this leave us?

A. Merely Rejecting (7) and (8)?

Revisionists may be tempted to simply reject (7) and (8) and leave everything else as was. After all, while McMahan has previously invoked these claims in criticizing the traditional view of proportionality, they are not central either to the primary criticism of the traditional view or to the positive view of proportionality that revisionists have developed. However, as I will show, this would be a mistake. We cannot simply reject (7) and (8) and leave the rest of the revisionist view in place.

To see why, consider cases in which each and every act of war is disproportionate but the war overall is proportionate. If revisionists simply

reject (7), what can they say about such a war? As revisionist just war theory stands, it appears to say that a state would be justified in ordering the troops into combat, but that the troops ought to refuse to fight. Furthermore, a moral state ought to require them to refuse and condemn them for doing precisely as the state ordered. In just war theory the proportionality tests are necessary conditions of permissible action, so if the soldiers' actions would not be proportionate, they ought to refuse to fight.

Consider, for example, one of our bombing raid examples, like those introduced at the end of Section III, where the later harmful acts produce very small amounts of good, but the overall war is proportionate. Imagine that the state orders all 100 missions. Each soldier knows that it is overwhelmingly likely that at least 90 percent of the other soldiers will fly their mission. They therefore know that it is overwhelmingly likely that flying their mission will be in bello disproportionate. Imagine that each soldier does as he is ordered.

Assuming that the other tests of just war theory had been passed and that the proportionality of the war was the only potential hurdle, according to revisionism as it stands, the following is true: First, the state acted permissibly in ordering the war, in both the evidence-relative and the fact-relative sense, since the war as a whole was proportionate. Second, evidence-relative, at least some of the soldiers ought to have refused to fight, since their actions were evidence-relative disproportionate. (If enough had refused, then others would have been evidence-relative permitted to fight.) Third, given that no previous soldier refused, when it came to their turn, each soldier was evidence-relative required to refuse, since their acts were evidence-relative disproportionate. Fourth, given that each soldier flew his mission, each acted fact-relative disproportionately and so fact-relative impermissibly.

The ideal scenario in this example is that the soldiers coordinate so that enough soldiers disobey their orders to make their colleagues' actions proportionate.[31] So, at the very least, the state is permitted to order all 100 missions, but at least some of the soldiers ought to refuse to do what they are ordered to do. And the state, having ordered them to do it, ought to condemn them for doing it. However, given that each decides to fly, each has acted both evidence- and fact-relative disproportionately and impermissibly, while the state that ordered them has acted evidence- and fact-relatively proportionately and permissibly. The very state that permissibly ordered them to fly ought to condemn each and every one for doing so.[32]

31. I am grateful to an *Ethics* referee for pointing this out.

32. Saba Bazargan and Victor Tadros have argued that soldiers can be permitted to fight in unjust wars. Here we have the reverse claim: that they can be obligated to refuse to fight in just wars. Saba Bazargan, "The Permissibility of Aiding and Abetting Unjust

Consider also variants of *Faulty Guns*, our nonidentity case, in which each and every soldier must perform his part if the valuable ends are to be secured, and the war as a whole will be proportionate. In this case, there is no opportunity for soldiers to coordinate so that some obey and others don't. If some soldiers disobey, no good will be produced, and the war will be disproportionate. But if all obey, then each acts disproportionately. All should refuse. But the state, according to revisionist just war theory, appears to act permissibly in ordering them.

In deciding whether to go to war, the state, according to (1) and (2), ought to look only at the proportionality of the war as a whole. In these cases, the state finds the war to be proportionate and so is permitted to go to war. Meanwhile, according to (4) and (5), soldiers ought to look at the proportionality of their acts of war. And they find, in these cases, that their acts will be disproportionate, and so they ought to refuse to fight. Furthermore, a just state ought to expect them to refuse to fight.

This, surely, is an unsatisfactory view of proportionality in just war theory: states ought to order their troops to do things that they know their troops ought to refuse to do, and every single soldier is required to refuse to fight in a war that has passed all the ad bellum just war tests. Revisionists unsatisfied with this bizarre moral standoff between states and their soldiers must further revise their views of proportionality. There are several ways of doing so, and I will explore some of those here.

B. A Master Principle?

If revisionists want ad bellum and in bello proportionality judgments to line up in the way prescribed by claims (7) and (8), then either they must further revise the in bello proportionality criterion or they must also revise the ad bellum criterion.

We can ensure that our proportionality calculations satisfy (7) and (8) by revising our proportionality principles so as to make it analytically the case that (7) and (8) are true. This can be achieved by establishing one form of proportionality as a master proportionality principle and defining the other form in terms of the master principle. We could amend ad bellum proportionality so that it is wholly defined, in its necessary and sufficient conditions, in terms of in bello proportionality. Or we could further amend in bello proportionality so that it is wholly defined using ad bellum proportionality.[33]

Imagine, for example, if ad bellum proportionality were simply an amalgam of our in bello proportionality judgments. This would mean

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Wars," *Journal of Moral Philosophy* 8 (2011): 513–29; Victor Tadros, "Unjust Wars Worth Fighting For," *Journal of Practical Ethics* 4 (2016): 52–78.

33. I am very grateful to an editor of *Ethics* for helping me to clarify the views investigated in this section.

rejecting any role for the ad bellum proportionality principle as traditionally understood—the idea of the proportionality of the "war as a whole" disappears.[34] Here is a principle of this type:

> *Revisionist ad Bellum Proportionality*: a war is ad bellum disproportionate if and only if the acts of war are, taken collectively, sufficiently in bello disproportionate.

I assume that in working out whether the acts of war are "sufficiently" in bello disproportionate we would want to consider both how many acts of war are disproportionate and how seriously disproportionate they are.

This principle, however, is unacceptable. Consider wars, like *Bombing Campaign*, in which each and every act of war is in bello proportionate. The proposal under consideration would consider that war ad bellum proportionate, even though, overall, more people are killed than are saved. This is a reductio of this view. Similarly, this view would allow that *Preemptive Strike* was ad bellum proportionate, even though the acts of war are only proportionate due to them averting threats caused by the war itself. This suggests that it would be a mistake to make aggregative in bello disproportionality necessary for ad bellum disproportionality.[35]

The alternative is to make the ad bellum criterion the primary form of proportionality and define in bello proportionality in terms of ad bellum proportionality. This would be to reject (6*). Here is one such view:

> *Revisionist in Bello Proportionality I*: an act of war is in bello proportionate if and only if it contributes to an ad bellum proportionate war.

This principle is implausible because an act of war can be seriously and egregiously disproportionate while still contributing to a war that, overall, stays within the boundaries of proportionality. It would be a mistake, therefore, to allow contribution to a proportionate war to be sufficient for in bello proportionality.

However, this principle could be amended as follows:

34. Of course, since under this revised principle the state will look at the proportionality (or disproportionality) of all of the individual acts of war, there is a sense in which it will also look at the "war as a whole," but I hope it is clear enough from the preceding sections that this is a very different sense of the "war as a whole" from that which is usually invoked in just war theory. Here is an alternative way of putting the same point: we replace the traditional moral assessment of the effects of the war as a whole with an aggregated assessment of the morality of the acts of war.

35. I return later to the question of whether it could be merely sufficient.

> *Revisionist in Bello Proportionality II*: an act of war is in bello proportionate if and only if it makes a proportionate contribution to an ad bellum proportionate war.

This principle invokes three different types of proportionality. There is the proportionality we are trying to define (in bello proportionality), and this is defined using two other types: traditional ad bellum proportionality, and another, new form of proportionality—which concerns a "proportionate" contribution. If this view were to be taken on, we would need to spell out how this third form of proportionality worked.

Both of these attempts to reformulate in bello proportionality, however, say that for an act of war to be proportionate it is necessary that it contribute to a proportionate war. This would mean that otherwise just but disproportionate wars, and unjust wars with no just cause, could contain no proportionate acts of war. But revisionists have convincingly argued that it can be permissible for soldiers to join unjust wars, when their contributions will save lives at proportionate cost.[36] This idea would have to be rejected if the revised ideas of in bello proportionality explored here were adopted.

C. Downgrading Proportionality?

As we have seen, revisionist just war theory, as it stands, is incompatible with (7) and (8). Straightforwardly rejecting (7) and (8), as I showed above, leads to a bizarre moral standoff in which a state would be justified in ordering its soldiers to war, a just war, but each and every soldier would be required to refuse to fight. But defining one form of proportionality wholly in terms of the other also looks problematic.

Some further revision of just war theory is therefore required. Consider again cases in which the war overall is proportionate but the acts of war are all disproportionate. One option would be to downgrade the importance of in bello proportionality and allow that, even though they know their acts will be in bello disproportionate, the soldiers are permitted to fight. This would be a radical adjustment to just war theory. At present both ad bellum and in bello proportionality are seen as hard constraints on permissibility. This option would soften the in bello proportionality principle and allow that soldiers are permitted to commit disproportionate acts of war so long as they are participating in a proportionate war overall. However, this would be a mistake. Consider a case in which a group of soldiers save 100 lives each by causing one death. Another soldier then kills ten and saves one. This last act is part of a proportionate war, but it is disproportionate and is impermissible in virtue of its

36. Bazargan, "Permissibility of Aiding"; Tadros, "Unjust Wars."

disproportionality. Downgrading in bello proportionality is too high a price to pay.

D. Amending the Structure of Just War Theory?

A more plausible response to a case in which each act is disproportionate but the war as a whole is proportionate would be to deny that the state is permitted to go to war in these circumstances: if it knows that each and every act of the war it orders will be disproportionate, it ought not to order the soldiers to fight. This would require the state to take account of the proportionality of the acts of war in deciding whether to go to war. This, in turn, means that (1) and (2) cannot both be true. The ad bellum proportionality condition cannot concern the proportionality of the war as a whole and be the only proportionality standard which must be consulted in a decision as to whether or not we should go to war.

In the distinction between jus ad bellum and jus in bello there are, we now see, two importantly different distinctions. The first distinction concerns which criteria or principles are relevant to decisions about whether or not to go to war, and which are relevant to decisions regarding acts of war, or participation in war; the second distinction concerns the "war as a whole" and "acts of war" as units of moral assessment. The position we are currently exploring says that the disproportionality of acts of war can be relevant in deciding whether to go to war. This position therefore relies on us carefully separating out these two distinctions.

Revisionists taking this path must carefully redraw the structure of just war theory. It is not enough merely to replace the traditional in bello nonmoral proportionality criterion with a proportionality criterion that is a moral assessment of the acts of war. Instead, we need to separate the principles governing resort to war from the principles that take the "war as a whole" to be their unit of assessment. The moral status of acts of war can affect the permissibility of a war in a way that cannot be captured by looking at the "war as a whole."

This kind of position will need careful refinement. We are accepting that when each and every act of war is disproportionate, the state ought not to go to war. If this is so, this is because the state ought not to order acts it knows are unjustified. We must, however, be careful not to go too far in this direction.

For example, it would be a mistake to think that whenever a war will contain any disproportionate or otherwise unjustified acts it is impermissible to start that war. This would lead to contingent pacifism, for surely we always know when we go to war that at least some disproportionate or otherwise unjustified acts will result. What we require is a position somewhere in between the extremes—one in which a war composed wholly of unjustified acts is ruled out, but one in which a war containing some unjustified acts is not automatically ruled out. This looks a lot like a

proportionality principle—a principle that provides limits. However, we have already rejected a position in which this is the only proportionality principle relevant to the decision to go to war.

What we need, then, is two independent proportionality principles for deciding on whether or not to go to war. One looks at the harms and goods produced by the "war as a whole." The other looks at the amalgamated unjustifiability (including the disproportionality) of the individual acts of war. In my view, not only is this the most plausible response to the cases we have seen here, but it also has independent plausibility. Consider this case:

> *Unruly Army*: A State Official must decide whether to send her unruly army to war. The unruly army will not obey the laws or morals of war. They will cause unnecessary suffering, and even when they achieve good ends, they will often do so at disproportionate cost to innocent people. However, overall, the war will have a just cause and will be delivered at proportionate cost.

According to just war theory as we find it, whether traditional or revisionist, the State Official is clearly permitted to authorize this war. The soldiers, under either view, will act impermissibly, but this does not give the State Official any reason not to send them. Overall, the harms that they cause will be proportionate, the war will achieve a just aim, and, we can imagine, the State Official has only considered war as a last resort.[37] In my view, that the State Official will cause so much wrongdoing, so much unjustifiable harm, is a reason not to send her soldiers to war. And the view we are considering here, in which the State Official must consider not only the proportionality of the war as a whole but also, separately, the proportionality (and, more generally, justifiability) of each act of war, is a position that allows us to factor that into her decision. For example, if the war as a whole would be only just proportionate, then the fact that the acts of war would cause so much unnecessary and disproportionate suffering would be enough to make the war impermissible.

This view, as we have seen, requires us to rethink both proportionality in war and the structure of just war theory. We now have three proportionality calculations rather than two. We retain the two existing calculations: the proportionality of the war as a whole, and the proportionality of acts of war. But we introduce a new proportionality criterion which takes account of the amalgamated disproportionality (and general unjustifiability) of the acts of war. This proportionality criterion is relevant to

37. Thus, while the soldiers could achieve their aims at a lower cost (and so the harms are unnecessary from their perspective), they are not unnecessary harms from the State Official's perspective, as she has no other options, and necessity involves comparisons between options for achieving the just cause.

the decision to go to war, but it is not a proportionality criterion that looks at the "war as a whole."[38]

We now have two proportionality principles relevant to the decision to go to war. There are two possible ways of combining them: as independent criteria for a just war—individually necessary conditions of permissibility—or as two desiderata that can be traded off against one another, in order to achieve one overall proportionality assessment of the war, which will be a necessary condition of the war's permissibility.

If we accept the former route, there is a sense in which we could still accept (8). That is, it could still be the case that if every act of war were disproportionate, the war would be ruled out as impermissible on proportionality grounds. But it would not be (8) as we originally framed it, for it would not be the case that the war was ruled out because the "war as a whole" was disproportionate. Rather, it would be because the "collective acts of war" were unacceptably disproportionate.

As for (7), we would need to reject it. It could be the case that each and every act of war were proportionate but the war as a whole were disproportionate, ruling it out. This leaves the potential for some of the conflicts between what states can and should command, and what soldiers may do, that we have been trying to avoid. This conflict, I suggest, is best addressed through additional principles concerning individual soldiers' acts which connect their permissibility to the wider enterprise of which they are part. In other words, just as the decision to go to war should pay attention to the collective acts of war, decisions about acts of war must pay attention to the war as a whole. Absent special circumstances, one should not participate in a war that is overall disproportionate, even if one's act (and the acts of all others) is proportionate. And so again, we see that the distinction between jus ad bellum and jus in bello needs careful clarification, for decisions about acts of war must take account of the "war as a whole."

VII. CONCLUSIONS

Revisionist just war theory has sought to replace the traditional nonmoral in bello proportionality assessment with a moralized assessment. On the revisionist view, both proportionality principles demand moral calculations of the same type, with the ad bellum criterion assessing the war as a whole and the in bello criterion assessing acts of war. I have shown that on the revisionist view a war can be ad bellum proportionate,

38. An alternative way of putting this point is that just war theory has been sufficiently inattentive to two different senses of "the war as a whole." There is the moral assessment of the effects of the war taken as a whole, and there is the aggregated moral assessment of the acts of war.

even though every act of war is in bello disproportionate, and a war can be ad bellum disproportionate, even though every act of war is in bello proportionate.

Revisionists, and Jeff McMahan in particular, have sometimes appealed to the fact that traditional just war theory has these very same entailments as a reason to prefer revisionist views. As the revisionist views stand, however, both views have these entailments, and so this is not a point in favor of either view.

More importantly, the revisionist view as it stands leads to the conclusion that states can permissibly order a war, even though they know that every act of war will be impermissible. Revisionist views, therefore, require further revision. I have explored several ways in which we might further revise the proportionality criteria in just war theory. There will, of course, be other routes I haven't investigated here open to the revisionist. Of the views I have explored here, the most promising involves rethinking jus ad bellum proportionality. Jus ad bellum proportionality has traditionally been thought of as assessing the war as a whole, and as being the standard which ought to inform decisions about going to war. I think this is wrong. My cases show that there are questions about whether we ought to go to war which cannot be answered by looking at the war as a whole. Whether or not the acts of war will be in bello disproportionate, or otherwise unjustifiable, is also relevant. Therefore, we should carefully distinguish two independent distinctions in the structure of just war theory. One distinction concerns the function of the principles: some principles are relevant to the decision to go to war, while others are relevant to decisions about conduct in war. The other concerns what is being assessed: the war as a whole, or the acts of war.